IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 809 of 1999

For Approval and Signature:

HONOURABLE MR.JUSTICE Z.K.SAIYED

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT ON BEHALF OF C P GOHEL - Appellant(s)
Versus
BHANUSHALI VIRJI HARIRAM (VENDOR/OWNER) & 1 - Opponent(s)

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Appearance :
MR IM PANDYA Ld. APP for Appellant(s) : 1,
MR YOGESH S LAKHANI for Opponent(s) : 1 - 2.

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CORAM : HONOURABLE MR.JUSTICE Z.K.SAIYED

Date : 11/12/2007

ORAL JUDGMENT

1. In this present appeal under section 378 of CrPC, the appellant-State has challenged the judgment and order of acquittal passed by the learned Judicial

Magistrate First Class, Mandavi, Kutchh dated 5.5.1995 in Criminal Case No. 120/1994 acquitting the present respondents.

2. It is the case of the prosecution that the original complainant filed Criminal Case against the respondents – accused for the offence punishable under sec. 7 and 16 of the Prevention of Food Adulteration Act in the Court of learned Judicial Magistrate First Class, Mandvi, Kutchh. The Original complainant Food Inspector visited the firm of respondent no. 1 Bhanushali Virji Hariram, situated at K.T. Shah Road, Mandvi, Kutchh on 30.4.1993 and purchased six boxes of “Hing” , each weighing 100 grams which was supplied by respondent no. 2 firm Jaswant Supplying Co., Jetpur with bill. That the sample was sent to the Public Analyst for analysis and upon receipt of the report from the Public analyst, it was found that said sample of 'Hing' was adulterated and misbranded and, therefore, the complaint was filed against both the respondents – original accused and they were charge-sheeted for the offence punishable under sec. 16 of the PFA Act.

3. The trial court, on the facts of the case, found that the prosecution has failed to prove its case beyond reasonable doubt. It is observed in the judgment of the trial court that there was a delay of 21 months in filing the complaint and the prosecution has committed breach of provisions of sec. 2(2) of the PFA Act which are mandatory in nature and has

also not followed the provisions of Rule-13 of the Act. It is also observed by the learned trial judge that sanctioning authority was not authorised to grant sanction and without application of mind the sanction was granted. The trial court has also observed that the prosecution has not followed the provisions of law and due to the lacuna in the evidence which is led before the trial court against the present respondents, prosecution failed to prove its case beyond reasonable doubt and, therefore, the trial court thought it expedient not to convict the accused relying on the evidence produced by the prosecution.

4. Learned APP Mr. IM Pandya has submitted that the trial court has not considered the evidence as per the provisions of law. The judgment of the trial court is not proper and legal. He has submitted that though all the mandatory provisions of law are followed by the prosecution and it is proved by oral as well as documentary evidence, the trial court has failed to accept the evidence in favour of the prosecution and against the respondents – accused.

5. Learned advocate Mr YS Lakhani has submitted that in the said criminal case the prosecution has filed the complaint after 21 months and the said delay of 21 months is not explained by the prosecution. He has also argued that it is the duty of the prosecution to explain the delay and when the delay is not explained properly then great prejudice

would be caused to the accused- present respondents.

6. Having regard to the facts and circumstances of the case, this Court has perused all papers and evidence produced before this Court. The trial court has observed that there is a breach of the provisions of Sec. 2(2) of the PFA Act. Section 2(2) of the Act is of mandatory in nature and in Rule-13 word “immediately” is used. From the papers, it appears that the sample was sent to the Public Analyst on 3.5.1993 and it was the duty of the Food Inspector to see that the sample is sent to the Public Analyst on or before 1.5.1993. The said sample of 'Hing' was purchased on 30.4.1993 and separate memorandum and sample are required to be sent to the Public Analyst in sealed packet on 1.5.1993, but it was not sent to the Public Analyst within the said period and it was sent to the Public Analyst after three days. The said delay was not explained by prosecution. In view of the provisions of sec. 2(2)of the Act which are mandatory in nature, are required to be followed by the Food Inspector and prosecution has failed to establish that the Food Inspector has followed the said mandatory provisions. Therefore, it appears that there is a breach of Rule 18 of the Act. From the oral evidence, it appears that Ex. 55 receipts prove that for the purpose of sample, one container was received but the case of the prosecution reveals that two boxes of 'Hing' were prepared and sent to the Public Analyst. So, as per the case of the prosecution two boxes are required to be found in the

container but Public Analyst found that only one box was received. So, the evidence of the prosecution is not fair, but it is doubtful. It is the duty of the prosecution to prove its case beyond reasonable doubt. The sanction is also produced but it appears from the contents of the sanction that the sanctioning authority has not applied its mind and it was issued without application of mind and, therefore, it cannot be considered as legal and proper sanction. From the papers, it also appears that before the trial court complaint was filed after 21 months. It is the duty of the prosecution to explain the delay but it is not explained by the prosecution and failure to do so undoubtedly is a circumstance of considerable importance and delay of 21 months in filing the complaint creates a doubt on the prosecution story and non-explanation of such gross delay in filing the complaint is also fatal to the prosecution case. From the evidence of prosecution witnesses, it clearly transpires that they have not stated in their evidence about the compliance of the provisions of Sec. 13 and sec. 2(2) of the PFA Act and when said provisions are mandatory in nature, then non-compliance of the mandatory provisions is fatal to the prosecution case. So, this appeal against the acquittal order can be dismissed on the grounds of delay as well as non-compliance of the mandatory provisions of law. In view of above, when this acquittal appeal is liable to be dismissed on the grounds referred to above, it is not necessary for this Court to enter into the merits of

the other issues raised in this acquittal appeal.

7. In view of the above discussion the prosecution has failed to establish its case beyond reasonable doubt and the trial Court has rightly acquitted the respondents – accused and I see no reason to interfere with the findings arrived at by the trial Court.

8. It is settled legal position that in acquittal Appeal, the Appellate Court is not required to re-write the judgment or to give fresh reasonings when the Appellate Court is in agreement with the reasons assigned by the trial Court acquitting the accused. In the instant case, this Court is in full agreement with the reasons given and findings recorded by the trial Court while acquitting the respondents – accused and adopting the said reasons and for the reasons aforesaid, in my view, the impugned judgment is just, legal and proper and requires no interference by this Court at this stage. Hence, this appeal requires to be dismissed.

9. In the result, the appeal is hereby dismissed. The impugned judgment and order dated 5.5.1999 passed by the learned J.M.F.C., Mandvi, Kutchh in Criminal Case No. 120 of 1994, acquitting the respondents – accused, is hereby confirmed. Respondents – accused are on bail, their bail bonds stand cancelled.

(Z.K. SAIYED, J.)

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